



September 3, 2020

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The Honorable James Orenstein
United States District Court Eastern District of New York
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Re: *State of New York, et al. v. Donald Trump, et al.*, 1:17-cv-05228 (NGG) (JO)

Consent Motion for Leave to File Brief as Amici Curiae

Dear Judge Orenstein:

Our firm, Orrick Herrington & Sutcliffe LLP, serves as counsel to Morton Rosenberg. We respectfully seek leave to file the attached *amicus* brief in support of plaintiffs' motion for partial summary judgment, Dkt. 272, filed on August 28, 2020, in the above-captioned case.¹

Proposed *amicus* has conferred with the plaintiffs and the defendants in the above-captioned case, and all of the parties consent to the motion for leave to file the *amicus* brief.

Proposed *amicus* is a leading authority on the Federal Vacancies Reform Act of 1998 (“FVRA”). He has firsthand knowledge of the history of the FVRA and the context of its enactment, both relevant to plaintiffs’ challenge to Mr. Wolf’s service as Acting Secretary of the Department of Homeland Security as being in violation to the restrictions of the Act.

“District courts have broad discretion in deciding whether to accept *amicus* briefs.” *In re HSBC Bank, USA, N.A., Debit Card Overdraft Fee Litig.*, 14 F. Supp. 3d 99, 103 (E.D.N.Y. 2014) (citation omitted). “An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Citizens Against Casino Gambling in Erie Cty. v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007) (citations omitted).

¹ Proposed *amicus* acknowledges that Your Honor’s Individual Practice Rules do not expressly require pre-motion letters for leave to file briefs as *amicus curiae*. However, because of the uncommon nature of such motions, we respectfully submit this letter out of an abundance of caution and in deference to the Court.



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For the foregoing reasons, prospective amicus respectfully requests permission to file the amicus brief on or before September 3, 2020.

Respectfully submitted,

Dated: September 3, 2020

/s/ Upnit K. Bhatti

Upnit K. Bhatti

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